

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**DECKER ACQUISITION, CORP.,  
dba BLESSING INDUSTRIES**

Fayette County, Iowa

ADMINISTRATIVE CONSENT  
ORDER

NO. 2010-AQ- **50**

TO: William R. Decker, Registered Agent  
Decker Acquisition, Corp.  
809 E. Dubuque Street  
Quasqueton, Iowa 52326

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Decker Acquisition, Corp., dba Blessing Industries (Blessing Industries) for the purpose of resolving the air quality violations which occurred when Blessing Industries failed to timely submit Minor Source Emission Inventory Questionnaires (MSEIQ) for its Oelwein and Fayette facilities. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Reid Bermel  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/281-4918

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/281-8563

**Payment of penalty to:**

Iowa Department of Natural Resources  
Henry A. Wallace Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure

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compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

**III. STATEMENT OF FACTS**

1. Blessing Industries is a sheet metal fabrication company with facilities in Oelwein, Iowa and Fayette, Iowa.

2. In January 2010, DNR's Air Quality Bureau sent Blessing Industries letters for the Oelwein and Fayette facilities informing the company that the DNR was conducting an inventory of air pollutant emissions from minor source facilities in the eastern third of the state of Iowa. The letters included instructions on how to complete and submit the MSEIQs for the two facilities. The letters also included information on additional assistance for completing the MSEIQs. The letters informed the company the MSEIQs were due May 15, 2010.

3. In February 2010, DNR sent postcards to Blessing Industries for both facilities informing the company of free MSEIQ training for submitting the report electronically.

4. In April 2010, DNR sent postcards to Blessing Industries for both facilities reminding the company of the May 15, 2010 due date for the MSEIQ submittals. The postcards included information on assistance for completing the MSEIQs.

5. On May 15, 2010, the MSEIQ for facilities in the eastern third of the state were due. Blessing Industries failed to submit the MSEIQs for the Oelwein and Fayette facilities by this date.

6. On May 26, 2010, DNR issued noncompliance letters to Blessing Industries for failing to submit the MSEIQs for Oelwein and Fayette by May 15, 2010. The letters required the MSEIQs to be submitted by June 15, 2010. The letters stated that failure to submit the MSEIQs by June 15, 2010 could result in further enforcement, including a monetary penalty. To date, Blessing Industries has not submitted the MSEIQs.

7. Blessing Industries has demonstrated a history of noncompliance with the air quality regulations. In August 1998, the Blessing Industries' Fayette facility was issued a Notice of Violation letter for failing to obtain a construction permit prior to the installation of an emission unit. In May 2004, the Blessing Industries' Fayette facility was issued a Notice of Violation letter for failing to maintain records required by a construction permit. In July 2007, noncompliance letters were sent to

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both the Fayette facility and the Oelwein facility for failing to timely submit the 2006 MSEIQ.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 21.1(3) states that the person responsible for equipment shall provide information on fuel use, materials processed, air contaminants emitted, estimated rate of emissions, periods of emissions or other air pollution information to the Director upon the Director's written request for use in compiling and maintaining an emissions inventory for evaluation of the air pollution situation in the state and its various parts. The MSEIQs for Blessing Industries were due May 15, 2010 and the company was informed of this requirement on several occasions. To date, Blessing Industries has failed to submit the MSEIQs. The above mentioned facts indicate violations of this provision.

**V. ORDER**

THEREFORE, it is hereby ordered and Blessing Industries agrees to do the following:

1. Blessing Industries shall submit the MSEIQs for its Oelwein facility and its Fayette facility within 30 days of the date the Director signs the administrative consent order;
2. Blessing Industries shall pay an administrative penalty of \$1,750.00 within 30 days of the date the Director signs the administrative consent order; and
3. If the requirement referenced in Paragraph 1 of this section is not completed within 30 days of the date the Director signs this administrative consent order, Blessing Industries shall pay a stipulated penalty in the amount of \$500.00 per month for each month the requirement in Paragraph 1 is not completed up to \$8,250.00. The stipulated penalty will be in addition to the administrative penalty assessed in Paragraph 2 of this section.

**VI. PENALTY**

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this

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matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$1,750.00 and stipulated penalties for violations of the compliance schedule of this administrative consent order.

The stipulated penalties in this administrative consent order are for future violations, if they occur. The stipulated penalties are designed to reflect the potential economic benefit to Blessing Industries for failure to make the expenditures needed to stay on schedule. Such penalties are related to the probable severity of the violation in that not meeting the compliance schedule in this administrative consent order is a fairly serious matter. The penalties would also be related to future culpability in that Blessing Industries has been put on notice by this administrative consent order that stipulated penalties will result if the compliance schedule is not met. The administrative penalty is as follows.

Economic Benefit - 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." Blessing Industries has been able to delay the costs associated with completing the MSEIQ for its facility. It is estimated that the economic benefit achieved by Blessing Industries is at least \$100.00 and \$100.00 is assessed for this factor.

Gravity of the Violation - One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient method to resolve this matter. Blessing Industries' failure to timely submit the MSEIQs prevented the DNR and the public from being aware of the facilities' compliance status in regard to the rules and regulations. Failing to timely submit the MSEIQs prevents the DNR from accurately inventorying minor source air pollutants. These violations threaten the integrity of the regulatory program because compliance with the reporting requirements is required of all companies such as Blessing Industries. Therefore, \$400.00 is assessed for this factor.

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Culpability - Blessing Industries has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. The company received at least three reminder letters for each of its facilities regarding the submittal of the MSEIQs. The company was also provided information as to where it could obtain assistance in completing the MSEIQ. Additionally, the company had the same violations in 2007 for both of its facilities. Based on the above considerations, \$1,250.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**


This administrative consent order is entered into knowingly and with the consent of Blessing Industries. For that reason, Blessing Industries waives the right to appeal this administrative consent order or any part thereof.

**VIII. NONCOMPLIANCE**

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. The DNR reserves the right to issue an administrative order or to refer to the Attorney General's Office in lieu of collecting stipulated penalties pursuant to this administrative consent order.

  
PATRICIA L. BODDY, INTERIM DIRECTOR  
Iowa Department of Natural Resources

Dated this 9 day of  
November, 2010.

  
Decker Acquisition, Corp., dba Blessing Industries

Dated this 3 day of  
November, 2010.

AQB #33-01-014; Kelli Book; Reid Bermel, DNR Field Office 1; VII.C.3